IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.M.P.(M) No.585 of 2007

Decided on: ***August 24, 2007.***

Holia ***…Petitioner.***

VERSUS

State of Himachal Pradesh ***….Respondent.***

Coram

The Hon'ble Mr.Justice Kuldip Singh, Judge.

Whether approved for reporting?[1]

For the Petitioner: **Mr.G.R.Palsra, Advocate.**

For the respondent: **Mr.M.L.Chauhan, Addl.A.G.**

Kuldip Singh, Judge (Oral)

This is an application for releasing the petitioner on bail filed under Section 439 Cr.P.C. in F.I.R. No.304/07 registered at Police Station, Sadar, District Mandi on 11.7.2007 under Sections 452, 397, 325 I.P.C.

2. The facts, in brief, are that on 11.7.2007 a telephonic message was received at Police Post, Pandoh from Police Post, City that a Saint (Baba) has been given beatings at place near *Sukhi Bai Paanch Meel.* On this, HC Bhoop Singh reached the spot and found that Baba Sunder Giri was lying in injured condition in his hut, he was removed to Zonal Hospital, Mandi. At Zonal Hospital, Mandi, Baba Sanjay Nath gave his statement under Section 154 Cr.P.C. that on 10.7.2007 he and Baba Sunder Giri after taking their meals were sleeping in their hut. At about 12.30 A.M. 6/7 persons, with their faces

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Whether the reporters of the local papers may be allowed to see the judgment?

covered, armed with sticks and iron rods trespassed into the hut and gave beatings to him as well as Baba Sunder Giri and asked them to hand over cash and mobile. They refused to hand over the articles demanded but those persons took away cash and mobile which were lying in the hut. These persons were speaking Bengali language. They threatened to kill them and not to disclose this incident to anybody. Baba Sunder Giri remained in the hut whereas he came walking and reached Bindravani. On this, case was registered.

3. During investigation, it was found that Sukhwinder Singh, follower of Baba Sanjay Nath had gifted on 10.7.2007 a mobile phone and cash to him. The accused Holia, Gurmel Singh @ Shankar, Piku son of Dharmu, Sagar, Nur Mahi @ Bhiku @ Rinka reached Pandoh in Maruti Car No.HP-38-7374 and after purchasing liquor were returning to Mandi. After consuming liquor, they stopped the car near the place of incident and Holia guarded the car and remaining four accused, for committing decoity, trespassed into the hut along with *dandas* and took away mobile phone and cash Rs.4000. In this incident, Baba had received injuries. The petitioner was arrested on 21.7.2007 and his police remand was taken up to 25.7.2007. The other accused persons have not been arrested as they have absconded. The petitioner has filed the present application for releasing him on bail. The learned Additional Advocate General has opposed the bail application. A prayer was made to reject the bail application on the ground that mobile and cash are yet to be recovered.

4. Heard and gone through the record.

5. The petitioner was arrested on 21.7.2007 and remained on police remand up to 25.7.2007. It is not the case of the police that any recovery was made during this period from the petitioner. The petitioner is resident of village Dyargi. The allegation against him is that he remained standing near the car. As per the police the car was purchased by Nur Mahi, Holia etc. a few months ago. The car HP-38-7374 was allegedly sold and alleged receipt is signed by Nur Mahi only. The apprehension of the learned Additional Advocate General that in case the petitioner is released on bail he will terrorize the witnesses and he can jump bail, but the apprehension is without any foundation.

6. In the facts and circumstances of the case, the petition is allowed. The petitioner is ordered to be released in case F.I.R. No.304 of 2007 dated 11.7.2007 under Sections 452, 397, 325 I.P.C. registered at Police Station, Sadar, District Mandi on his furnishing personal bond in the sum of Rs.20,000/- with one surety in the like amount to the satisfaction of any Judicial Magistrate at Mandi subject to the condition that he shall not hamper the investigation and tamper with the prosecution evidence in any manner.

7. The observations made in the order shall not be construed as expression of opinion on the merits of the case.

Copy ***dasti,*** on usual terms.

August 24, 2007 ***(Kuldip Singh), J.***

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